

Consumer's Protection in Commercial Transactions: The Fraud in Jordanian Law and the Defect in French Law

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Abstract: This article aims at tackling the consumer protection against fraud and defect in commercial transactions, according to Jordanian law and French law, as this protection is a significant legal issue forced by the advance occurred in the markets and the increased interest in the consumer transactions, which mainly shows up in contracting. Thus, the article aims to present the available legal protection for consumers under Jordanian penal law, and French civil law. It was not an option to put penal provisions along with civil provisions, because we found that, in opposite of the French law, Jordanian law doesn't set explicit civil consumer protection in commercial transactions, but at the same time it addresses a worthy consumer protection in penal law. By consequence, through revealing both, Jordanian and French consumer protection rules, we recommend that, at the time we identify the Jordanian penal consumer protection, we believe that in order to give effective civil protection to the consumer, the Jordanian legislator should include new civil rules that deal with the reality of commercial transactions, in the light of the civil French consumer protection law.

Keywords: Consumer protection, Fraud, Defect, Jordanian law, French law, Commercial transactions.

1. Introduction

The legislator paid special concern to the consumer, and considered that protecting the consumer from practices that might harm him is one of the priorities of his legislative policy, and his interest is part of the public interest that he ensured through several punitive legislation provisions criminalizing violations that may affect consumer legitimate interests, which disseminated in many legislations, including the general provisions contained in the Jordanian penal law; Which in fact, it is not confined to consumer affairs, as it criminalizes violations committed by the producer or distributor to which the consumer, merchant or other producer may be exposed, including only special provisions on consumer protection contained in the consumer protection law.

In 2014, the French parliament approved the consumer law

which applies the Consumer Rights Directive. It had an important effect on e-commerce. we plan to address the Jordanian legal protection along with the French law, what legislators that the legislator guaranteed to the consumer from fraud offences in commercial transactions contained in the Penal Law is as follows: the nature of fraud in commercial transactions; criminalize acts of fraud affecting human and animal nutrition; criminalizing acts of fraud in pints and the offence of fraud in the subject matter of the contract.

2. Nature of Fraud in Commercial Transactions

Chapter (III) of Title (9) and Chapter (IV) of Title (11) of the Penal Law for offences of fraud, under the heading "Fraud" and "Fraud in Transactions" respectively, were singled out by the Jordanian legislator, however, like others Comparative legislation¹, the legislator did not define (fraud) in general, nor (fraud in commercial transactions) in particular, even the term "fraud" was not addressed by the Jordanian legislator and was not incorporated into the civil law. Rather, he focused on deception, defined it, and considered it a defect in consent in contracts², as for fraud, he merely described its forms within the scope of its criminalization of the acts involved.

For the purpose of providing a clear concept of the term fraud, the first topic addresses the concept of fraud in commercial transactions linguistically and idiomatically, whereas the general philosophy of Jordanian legislation to criminalize acts of fraud in the Penal Law is addressed in the next topic.

A. Fraud Concept in Commercial Transactions

Anti-fraud legislation in commercial transactions confronts practical problems, due to the lack of comprehensiveness of the positive provisions that address the phenomenon of fraud for all forms of fraud that may be committed by the weak in spirit, as a result of the term fraud being broad and difficult to confine to

¹ We point out that the Iraqi legislator has defined fraud in the Transportation Law No. (80) of 1983 in Article 17, paragraph (Second / A), as: "Every act or omission of an act that takes place on the part of the carrier or his subordinates with the intent to cause harm."

² The Jordanian legislator defined deceit in Article 143 of the Civil Code as: "When one of the contracting parties deceives the other by fraudulent, verbal or actual means that leads him to accept what he would not have accepted otherwise."

a particular form or act, as well as the abundance and diversity of commodities and products, and thus the diversity in methods and forms of fraud that may affect it. Therefore, in view of the above, the concepts of fraud differed, and most of them included defining the forms and methods of fraud, which requires defining the concept of fraud linguistically and terminologically:"

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Fraud is tempting consumer without benefit, so he appears to him that is not hidden other than what is hidden.³ Ibn Manzur argues: Defrauding is the antithesis of advice, which is a well of muddy water that people do not use frequently because it is mixed with impurities such as mud and the like.⁴ Linguistically, the term "fraud" has several meanings and acts, including deception, cheating, deceit, and forgery, all of which revolve around the same meaning of misleading. Fraud, then, is deception, misleading, and the use of fraudulent methods that psychologically affect the other party to mislead him with what is incorrect or false with the intention of achieving an illegitimate gain.

A part of jurists defines fraud as: "Any change, modification or distortion that occurs in the essence or natural composition of a material or commodity intended for sale and undermines its basic characteristics, conceals its defects, or gives it the look and appearance of another commodity that is different from it in reality in order to benefit from the characteristics counterfeit or accrued benefits and gain the price difference."⁵

This definition has been criticized because it is limited to one form of fraud, that of fraud in the commodity it-self, without taking into account the possibility of fraud in the service contract. This definition also ignored other fraudulent forms resulting from verbal misleading to non-contractors, in order raising the price of the commodity, with the aim of harming the contractor, and not with the aim of achieving a benefit, such as deceptive selling.

Another definition of fraud stated: "Presentation of the

contract by one of the contracting parties or others in a way that contradicts its reality verbally or in deed, or concealing an undesirable description, so that if one of the contracting parties becomes aware of it, he refrains from contracting it"⁶

We tend that the previous definition is the closest to include all forms and means of fraud in transactions, as fraud can be carried out by a contractor or others, and it can also occur by a positive action by the perpetrator, such as any change in a commodity that changes its properties or conceals its true nature with a false physical appearance, or that can occur by a negative act, as refraining from informing the purchaser of the defects of the commodity. Fraud can also be achieved by verbal means such as lying or deed, such as "Al-Tasriyya," that is, leaving the cattle without milking with the intention of piling up milk to deceive the buyer of the abundance of milk.⁷

The concept of commercial fraud differs from the above-mentioned terminological definition only in terms of where it occurs in the commercial transaction⁸, and it can be briefly defined as follows: "Concealing the truth of the subject matter of the agreement and presenting it without its true appearance, and it is often committed by the professional or expert with the intention of making a profit⁹. The fact that the transaction is commercial does not require the seller to be a merchant or to have an outlet to sell faulty and adulterated goods."¹⁰

In French law, consumer law refers to both consumers and non-professionals. Giving the consumer code, a consumer is "any physical person not acting for purposes which are in the framework of his commercial, industrial, artisanal, self-employed or agricultural activity".¹¹ The same article (L.823-2) defines the non-professionals as any legal person who is not acting in professional capacity. As provided for by the consumer code, consumer protection directions refers to professionals, which are defined as "any physical or legal person, public or private, acting for purposes which are within the framework of its commercial, industrial, artisanal, self-employed or agricultural activity, also where it acts in the name and on behalf of another professional".¹²

B. General Philosophy for Criminalizing Commercial Fraud in Jordan's Penal Law

The Jordanian legislator adopted a precise philosophy in criminalizing acts of fraud committed by professionals, in which the consumer may fall victim, in the interest of the public interest first and the interest of commercial transactions second.

The legislator's philosophy of criminalizing fraud in commercial transactions was evident through the Articles of the

³ Abu Jeeb, Saadi (1988). The Fiqh Dictionary, 2nd Edition, Damascus, Dar Al-Fikr, p. 274.

⁴ Ibn Manzoor, Lisan al-Arab, 1st edition, Dar al-Ma'arif, pg. 3259.

⁵ Al-Jundi, Hassan Ahmed (1996). Explanation of the Law for the Suppression of Fraud and Fraud, 2nd edition, Cairo, Dar Al-Nahda Al-Arabiya, p. 148.

⁶ Al-Salami, Abdullah (2004). Fraud and its impact on contracts, part 1, edition 1, Dar Treasures of Seville, Riyadh, p. 33.

⁷ Nasr, Muhammad bin Musa (2008). The crime of fraud (its provisions, images, and devastating effects), Dubai, Al-Furqan Library, p. 94.

⁸ Commercial transaction means: "all legal actions undertaken by the producer and supplier by selling a product or service for a fee to the consumer,

in order to achieve profit. See Abu Ali, Ahmed (2019). The legal nature of commercial fraud crimes under the Consumer Protection Law: a study Comparison, Arab American University, Jenin.

⁹ Al-Qadi, Muhammad Mukhtar (2014). Commercial fraud, Alexandria, New University House, p. 11.

¹⁰ Al-Aqili, Aziz (2015). The mediator in explaining commercial legislation, 3rd edition, Amman, Dar Al Thaqafa, pg. 47.

¹¹ Code de la consommation française, Partie législative nouvelle, Articles liminaire - L823-2.

¹² *Ibid.*

Penal Law through.¹³

1) *Respecting the Principle of Legality*

The principle of legality is one of the essential components of criminal legislation and represents the strongest guarantees of individual freedom in the field of criminalization and punishment. The protection of the interest of the individual is achieved only by this constitutional principle,¹⁴ according to which the act or omission can be considered a crime by law only, and no penalty may be imposed unless the law provides it in detail.

According to the above, the provisions of criminalization and punishment have only one source, which is the written law, which delineates the boundaries between lawful and unlawful acts. Pursuant to this principle, criminalization texts must be precise, clear, and free from ambiguity, which may confuse the criminal judge in interpreting the scope of the legal text.¹⁵

We noted through his review the texts on fraud in commercial transactions contained in the Penal Law, that although the Jordanian legislator, did not specify what is meant by fraud, he did not limit him-self by mentioning the term "fraud" only, but rather defined the manifestations and forms of this fraud, which may affect the subjectivity of goods and products, their basic characteristics, their composition, types, or origin. By identifying the various forms of fraud, the penal legislator avoided criticism that could have been directed to the drafting of provisions criminalizing fraud in commercial transactions.

2) *Considering Fraud in Commercial Transactions Serious Offences*

Jurists went to divide the offences into multiple sections based on their viewpoint on these offences. In terms of the material element, they classified it into material offences and formal offences. Material offences are crimes whose material component consists of conduct, result, and the causal relation that connects conduct to the result, and thus achieves the harmful result of the committed actions, whether it is positive or negative conduct, which is one of the material elements of the offence, and the offence is not complete unless that result occurs, An example of this type of offences is murder, which does not occur except by ending the life of the victim.¹⁶

While formal offences are those whose material element consists of conduct only. For the most part, the material element is merely an abstract incident, such as an act, statement or omission, in which no negative consequences arising from the act or omission is foreseen as a result for the commission of the offence, since the criminal result is not a component of its material element and it is therefore punishable by law, even if

It did not result in any criminal consequences or direct harm to the interests of individuals, also the attempt in such offences is inconceivable, as it may or may not take place. An example of this type of offences is the offence of carrying a weapon without a permit.¹⁷

Jurisprudents refer to this type of offences as "Offences of Danger", since the legal consequence of a criminal activity is to endanger the protected interest, whether or not such conduct has a material consequence, which is termed "Precautionary Criminalization".¹⁸

We, at the texts of fraud contained in the Jordanian Penal Law, observe that the policy of the legislator in criminalizing fraud has differed between those that criminalize acts that are directly related to the consumer and affect his health and body, and those that may affect the consumer's fund and confidence in the transactions.

Jordanian legislation considers fraud offences that are directly related to the consumer and his daily affairs related to his health as "Offences of Danger" that are punishable by law only because of the criminal conduct of the offender. Fraud offenses in products intended for human or animal food or pharmaceuticals, agricultural and natural products do not have to harm the consumer's health as a result of the use of adulterated or defective products; So, if the consumer discovers the reality of the defective or adulterated product and refrains to purchase it, then the offence is complete, thus, attempting in such fraud offences that affect food products, pharmaceuticals, or agricultural or natural products is inconceivable.

When the legislator decided to generalize, to include in the scope of the criminalization of fraud, substances that were not prejudicial to the consumer's health and physical integrity, he went in a different direction, by not considering them as "Offences of Danger", and not only demanded that the offence be committed, but demanded that the result of the offence be achieved, which is that the consumer becomes a victim of fraud¹⁹. However, in Article (437) of the Penal Law, the legislator did not limit the punishment to a complete offence, but also to the attempted offence.²⁰

We noted from the foregoing that the policy of the Jordanian legislator in combating fraud is of a preventive nature, as it does not require defective or adulterated products to reach the consumer, but merely the possession of products of any food or drink harmful to health, will be criminalized according to Article (388) of the Penal Law. Under Article (439) of the Penal Law, the legislator also criminalizes the possession of uncontrolled or uncelebrated instruments of weights and pints, or possession of other weights and pints differs from those

¹³ Al-Ruwaih, Asaad Abdul Rahman (1999). Penal protection for the consumer from fraud in commercial transactions according to Law No. 20 of 1976 as amended, Master's thesis, Kuwait University, p. 8.

¹⁴ Article (19/Second) of the Iraqi constitution stipulates: "There is no crime or punishment except by a text. There is no punishment for an act that the law considers at the time of its commission as a crime, and it is not permissible to apply a harsher punishment than the punishment applicable at the time of the crime." As for the Jordanian constitutional legislator, he implicitly endorsed this principle within the provisions of the Jordanian constitution, as it was stated in Article (8/1) of it that "no one may be arrested, arrested, imprisoned, or his freedom restricted except in accordance with the provisions of the law."

¹⁵ Abdel Sattar, Fawzia (1992). Explanation of the Penal Code, General Section, Cairo, Dar Al-Nahda Al-Arabiya, p. 55.

¹⁶ Abu Amer, Muhammad Zaki (1992). Penal Code, General Section, Beirut, University House, p. 273.

¹⁷ Al-Halabi, Muhammad Ali (2007). Explanation of the Penal Code, General Section, 1st Edition, Amman, Dar Al Thaqafa, p. 87.

¹⁸ Al-Nawaisa, Abd al-Ilah Muhammad (2010). Crimes against state security in Jordanian legislation, 2nd edition, Amman, Dar Wael, p. 21.

¹⁹ Articles (430-436) of the Jordanian Penal Code.

²⁰ Article 68 of the Jordanian Penal Code defines attempt as: "The commencement of the execution of one of the apparent acts leading to the commission of a felony or misdemeanour."

specified by law, which could be used to defraud contractors.

3) *The Victim's Consent does not Negate Criminal Liability*

Victim consent means: "The right direction of legally recognized will, towards acceptance of the act of assaulting the interest protected by law."²¹ That is, from the point of view of the law, an infringement of the victim's right is an offence, but the victim tends to consent to such an infringement, that is, a violation of legal protection²². In principle, the consent of the victim does not cancel the offence and does not exclude it from punishment,²³ because punishment in criminal issues is not a right of individuals in their individual capacity but the right of society,²⁴ so when the law criminalizes certain actions, it protects society, since the most important harm from the point of view of the legislator is the harm that it is caused to society as a whole caused by a violation of its regulations, and not the harm that might be caused to one of its members, so that the victim cannot act on the right he does not have.

The Jordanian legislator considers that the offence of fraud is an offence against the public interest, in particular fraud offences that harm human or animal health,²⁵ on the basis of which the legislator did not take into account the consent of the buyer or consumer and did not entail any legal effect on him in negating the liability of the offender, because his knowledge of fraudulent products that are harmful to his health, and his consent to purchase them, does not prevent the occurrence of the crime.

4) *Determining Criminal Liability as a Result of Others Conducts*

The gravity of consumer offences is one of the main factors that led to the legislator's non-compliance with the general rules of liability. Consumer offences had a direct impact on the public health of the state and the economic situation, and the perpetrators were characterized by special characteristics and abilities motivated by greed and financial gains at the expense of the consumer.

On this basis, the Jordanian legislator deviated from the rule of personal punishment for offences against the consumer and recognized criminal liability for offences that they did not commit, as they are the beneficiaries of the offence. Article (18 /a) of the Jordanian Industry and Trade Law No. (18) Of (1998) and its amendments states the following: "Both the owner and the manager of the store shall be liable for any violation of the provisions of this law, as appropriate."

The legislator's aim in establishing the liability of the owner and the manager of the store is to deter the shop owners from monitoring their subordinates, because if the shop owner knows that he will be criminally liable for any violation that may occur within his store, he will take great precautions to prevent the

occurrence of such offence.²⁶

While Article (18) of the Jordanian Consumer Protection Law states that the supplier is liable for violations committed by his legal representatives: "The supplier shall bear liability for any violation of the provisions of this law committed by any person legally represented him, employed with him or deals with consumers on his behalf."

In French law, it is the civil liability that can stop the commercial of abusing the consumer rights. The fact that the commercial is not aware of the reality of the defect of the product is not a valid defence in the court. It is well recognized by case law that commercials are supposed to be aware of "hidden defects" touching the products they expose.

However, the commercials could avoid liability by proving that the defect was obvious at the time of the transaction. The obvious defect differs depending on the capacity of the consumer, that is, whether they are a familiar professional in the field.

3. Criminalize Acts of Fraud Affecting Human and Animal Nutrition

It is observed that although the legislator did not specify what fraud is, he did stipulate the criminalization of a set of fraud-related conducts that include human and animal food, drugs and products, where one of them is sufficient to determine the offence, without requiring consumer harm, as the offence of commercial fraud stipulated in Article (386) of the Penal Law is considered a formal offence. At the outset, the article will review these conducts and clarify their criminal intent, and then address their penalties.

Criminal conduct in the offence of commercial fraud is established in one of the following forms.

A. *Act of Fraud Affecting the Product's Subjectivity*

This conduct means material acts committed by the offender that affect the essence of the substance, product or the components of the substance, such as a change in the natural component itself or the addition of another component,²⁷ where the act of fraud is proven by one of the following methods.

1) *Fraud by Adding or Mixing*

Fraud offence is achieved in this method by mixing a substance with a different substance or of the same nature for the purpose of concealing its poor quality and presenting it with a better appearance or specifications of better quality, provided that this mixing or addition is not a commercial custom intended to improve production, or a process licensed by legal or regulatory provisions. An example of such fraud is mixing natural milk with industrial milk.²⁸

²¹ Hosni, Mahmoud Naguib (1988). Explanation of the Code of Criminal Procedure, 2nd edition, Cairo, Dar Al-Nahda Al-Arabiya, p. 353.

²² Al-Shehri, Khalid bin Mohammed (2000). The victim's satisfaction and its impact on criminal responsibility, master's thesis, Naif Arab Academy for Security Sciences, Riyadh, pg. 97.

²³ The researcher indicates that there are exceptional cases in which the consent of the victim has an impact on the commission or otherwise of the crime, which are crimes in which the victim's lack of consent is one of its elements, such as theft crime in which the victim's consent is absent from the hidden element, and the crime of violating the sanctity of a house that requires that Entry is without the consent of its owner.

²⁴ Abdul Malik, soldier. The Criminal Encyclopedia, Part One - (Trafficking - Subscription), 2nd Edition, Beirut, Dar Al-Ilm for All, pg. 538.

²⁵ Article 387 of the Jordanian Penal Code No. 16 of 1960 and its amendments.

²⁶ Hussein, Nassif Muhammad (1998). The general theory of consumer criminal protection, Cairo, Dar Al-Nahda Al-Arabiya, pg. 410.

²⁷ Ushar, Kahina (2018). Consumer Protection from Food Fraud, Master Thesis, Akli Mohand Olhaj University, Bouira, p. 12.

²⁸ Qaloum and Mahjoubi (2016). Criminal Protection for Consumer Security and Safety, Master Thesis, Ahmed Deraya University, Adrar, p. 20.

It should be noted here that only acts of mixing or addition are sufficient to prove the offence of fraud,²⁹ even if it does not cause harm to the health of the consumer, and even if the adulterated or corrupted products do not reach the consumer.

2) *Fraud by Detraction*

Fraud in this method is achieved by removing part of the product composition components, or to seize some constituent elements of the product, which are assumed to be available customarily or legally, without leading to invalidation or destruction of the product, accompanied by presenting the product with the same name, or at the same price as the complete product, or presenting it better than its actual status, this method requires maintaining the exterior appearance of the attraction as if it were an original product.

These steps often precede the consumer fraud process, in addition, after some component elements of the original product are seized, they are replaced by the addition of other elements and materials that inspire the original and complete appearance of the product.³⁰

3) *Industrial Fraud*

This method of fraud means the manufacture of products that either lack in their ingredients one of the substances that must be included in the manufacturing process according to laws and regulations or according to commercial or industrial standards, and examples of this is what may occur in the field of medication preparation, such as preparing a drug whose active ingredients have been identified by physician, without including all of these ingredients. Fraud by this method is also possible by manufacturing a product that lacks all the elements and ingredients that are supposed to be present in it, such as selling juice made from flavourings as a natural syrup.³¹

We point out that the offence of fraud set forth in Article (386/A) is a formal offence that does not require actual harm to the consumer, but it is sufficient for the perpetrator to commit criminal activity without requiring any result.³² The constituent conduct of the material element of this offence is to fraud in products by altering their ingredients and properties by either mixing, adding, decreasing or fraudulently manufacturing them. It is noted that the offence of fraud affecting the composition and properties of products is only achieved with positive activity by the perpetrator, so the offence does not establish in the event that the changes that occurred in the products are not by the producer or distributor, such as the corruption of food commodities as a result of microbes or improper storage. The offence also requires the fulfilment of the moral element of the will of the perpetrator to commit the offence, with his knowledge that his actions lead to a change in the characteristics and composition of the product, and the tendency of his will to bring about this change, which is

expressed through the general criminal intent.

In addition, the Jordanian legislator requires that the offender have a special criminal intent represented in his intention to commit fraudulent acts, by offering the adulterated product for sale, and thus requires that the act of fraud occur on products prepared primarily with the intent of profit. This offense is not proven in the event that the person committed the fraud, and his personal intent was towards personal or family consumption.

B. *Offering, Presenting or Selling Adulterated or Corrupt Products*

The real infringement of the consumer's right to his physical integrity can only be achieved through actual circulation in adulterated materials and products and increasing the chances of obtaining them. It should be noted that the legislation not only protects the consumer by criminalizing fraud in products, but also criminalizes the circulation of adulterated and corrupted products and their inclusion in commercial transactions, and this can be observed with the Jordanian legislator in Article (386), paragraph (b), where he listed several conducts related to the subject of circulation in adulterated or corrupted products, so he criminalized the actions that consist of selling adulterated or corrupted products or offering them for sale.

It is noted from the text that the legislator did not require harm to the health of the consumer as a result of the act, but only the conduct required to achieve the material element of the offence. The conducts punishable in this paragraph are the offering or presenting for sale of products related to human or animal food, drugs, beverages, agricultural, industrial or natural products, which are considered continuity offenses, or the sale of the aforementioned products. Also, the legislator did not require that the offender himself be the one who tampered with the composition and characteristics of the product, but rather only conditioned his knowledge of the offence of fraud and offering the adulterated or corrupted product for sale that is no longer suitable for consumption for reasons beyond human control, such as the expiration date of food.³³ This fraud offence in this conduct is achieved in three methods.

1) *Presenting of Adulterated or Corrupt Products*

This form is achieved by presenting an adulterated or corrupt product to the consumers audience, and the display takes place in the sale outlet or any other place designated for sale, is visible to potential buyers even if they do not actually notice it, this form is more general than offering for sale, because this temptation will encourage the consumers audience on *visiting the store*.³⁴

2) *Offering Adulterated or Corrupt Products for Sale*

An offer is defined as an invitation to contract addressed to a

²⁹ Judgment No. 417 of 2013 Criminal Court of First Instance, Misdemeanor, South Amman, Qustas website.

³⁰ Moussa, Hossam Tawakul (2016). The legal regulation of protection from fraud and commercial deception in the Egyptian legislation, a study in the Anti-Fraud and Fraud Law No. 48 of 1941 and its amendments, an amended and revised version of a doctoral thesis, Mansoura University, Egypt, p. 29.

³¹ Al Nasr, Abu Anas (2008). The crime of fraud, its rulings, forms, and devastating effects, previous reference, p. 57.

³² Judgment No. 5681 of 2021, Amman Criminal Court, Qustas website.

³³ The validity period is meant as the period of time during which the food product retains its basic characteristics and remains palatable, acceptable, and fit for human consumption until its end, under the specific conditions of packaging, transportation, and storage. Food Safety System, Dubai Municipality, p. 11.

³⁴ No, Rossum Attia (2014). Criminal protection for consumers from fraud in the field of trademarks, a comparative study, PhD thesis, Mansoura University, Egypt, p. 104.

specific person or to the consumers audience. This method is achieved by simply placing fraudulent or corrupt products visible to the buyers in a spot open to the public to entice them to buy them, such as by placing the products on a display table or in a storefront.³⁵

It should be noted that the terminological difference between "offering" and "presenting" here is of no value, as both are achieved by placing adulterated or corrupt products within the reach of those who may wish to possess them, if it turns out that the purpose of this situation is the desire to obtain purchasers', and it is not required that the act be issued by the owner of the outlet or its manager, but it is sufficient that the act be issued by any person responsible for managing the store to be under questioning about the offence, and both may be subject to questioning if it is proven that they colluded together to provide such products to consumers.³⁶

3) *Selling Adulterated or Corrupt Products*

Article (465) of the Jordanian Civil Law described "sale" as: "the transfer of ownership of money or a financial right in exchange for compensation." This form of criminalization requires the existence of a sales contract between the consumer and the seller, and the legislator did not require the existence of sound contract to prove the offense of selling adulterated or corrupt products, because the reasons for invalidity that may use as plea in the civil court do not affect the fact that a criminal offense was committed.³⁷

To grant the criminal description of the act of presenting, offering or selling adulterated or corrupt products, it is required that there be criminal intent that the dealer knows that they are adulterated or corrupt, and that his will is directed to present them to consumers or offer them for sale or sale.

C. *Trading Products That May Cause Fraud*

It has already been mentioned that the Jordanian legislator has adopted a preventive policy to criminalize acts of commercial fraud in order to protect the rights of consumers. Thus, the Jordanian legislator did not criminalize only the acts of fraud that involve the subjectivity of products or criminalize dealing in adulterated products or offering them for sale or sale, but rather sought to eliminate all means that would facilitate fraud.

It is observed that the legislator expanded the scope of protection and stipulated the criminalization of acts that pave the way for the occurrence of fraud, such as commercial dealings through offering, displaying or selling products that may cause fraud with knowledge of their use. It is not required that these products are usually used for suspicious purposes or that they are unsound in origin, but it is sufficient that their purpose is to facilitate fraud.

This offence, like its predecessors, is a formal offence, which requires the availability of a material act, which consists in offering, displaying or selling products that would cause fraud. As for the moral element, which is the general intent, it is the offender knowledge that the products he offers for circulation will be used for fraudulent purposes. However, his will tends to offer them for sale to the consuming public.³⁸

D. *Incitement to Fraud*

Article (386), paragraph (d), stipulates that the offence of fraud is based on another material activity represented in the act of incitement to fraud products intended for human or animal food, drugs, natural, industrial and agricultural products.

The incitement is defined as: "Creating the idea of crime in a person and consolidating this idea so that it becomes a determination to commit the crime so that he inspires the perpetrator to commit it and pushes him materially to it by influencing his will and directing him in the direction he wants."³⁹

The Jordanian legislator in Article (80/1/a) of the Jordanian Penal Law defines the instigator as: "Whoever induces or attempts to induce another person to commit an offence by exploiting influence, offering him a gift, affecting him by threat, deception, disbursement of money or abuse of office".⁴⁰

It is noted from reading the text that the legislator has identified the instigator's activity as "inducing" or "attempting to induce" the commission of the offence. Equality between induce and its attempt means that incitement is considered complete, whether it is accepted or not by the person to whom it is addressed. The incitement directed at the perpetrator's psyche is the material element of the offence of the instigator, meaning that the perpetrator in the offence of fraud that affects the subjectivity and characteristics of the products is the one who induces or attempts to induce others to fraud, assigning him for this task, and inciting him to do so.

The legislator did not suffice with defining the criminal activity represented in incitement to fraud, but rather specified the means by which the incitement must occur in order to become a criminal and be punished for it,⁴¹ which are the means stipulated in Article (80). of the Penal Law and exclusively listed by the legislator, which varies between means of temptation such as granting money, offering gifts, and other intimidating things such as threats, abuse of influence and abuse of position, in addition to influencing the perpetrator by using adulteration and deception.

In term of the moral element of this offence, it is understood that for the offence to be committed, it is not enough to commit the offence committed by the instigator of creating the idea of fraud in the mind that was free of it. Rather, this incitement must

³⁵ No, Rossum Attia (2014). The previous reference, p. 105.

³⁶ Obeid, Raouf (2015). Explanation of the Complementary Penal Code, 1st Edition, Alexandria, Al-Wafaa Law Library, pg. 599.

³⁷ Glam, Beautiful (2011). Criminal protection of the consumer from commercial fraud, master's thesis, Cadi Ayyad University, Marrakech, pg. 97.

³⁸ Judgment No. 5231 of 2020 Amman Criminal Reconciliation, Quostas website.

³⁹ Dawoodi, Ghalib Ali (1969). Penal Code, General Section, 1st Edition, Basra, Modern Printing House, p. 421.

⁴⁰ We point out that the Iraqi legislator referred to the issue of incitement in several places in the Iraqi Penal Code No. 111 of 1969, so he considered incitement to be a complicity in the crime in the text of Article 48, and considered it a separate crime in other places such as inciting a juvenile to consume sugar in the text of Article 387, but the legislator The Iraqi did not stipulate a definition of incitement, as did the Jordanian legislator.

⁴¹ Al-Raqqad, Ahmed Mahmoud (2014). Criminal contribution to the crime of murder by poison, a comparative study, master's thesis, Middle East University, Jordan, p. 105.

be issued by him with the intention of committing them, i.e. the instigator must be aware of the significance of his expressions and their impact on the psyche and thought of the other, and his expectation that he who incited him to commit acts of fraud. It also requires directing the will of the instigator to plant the criminal idea and commit the act of fraud. If the instigator does not realize the impact of his expressions and their real importance and does not intend the meaning that extracted by whom addressed to them, then the intention is no longer available to him and thus his liability denies.⁴²

In French law, it is very hard to avoid liability grounded on the hidden defects guarantee. However, the professional could avoid liability if he proves one of the following: he did not put the product on the marketplace; the defect became appeared after the product was positioned on the marketplace; the product was not fixed to be sold or dispersed for income; technical knowledge at the time was inadequate to recognize the defect (Article 1245-11, Civil Code); the defect results from submission to the mandatory rules delivered by public authorities (Article 1245-10, Civil Code.)

4. Conclusion

We presented the outlines of the consumer's protection against fraud in light of the Jordanian legislation, along with the civil protection in French law via the concept of defect. Although consumer's civil protection is precisely regulated in Jordan law under the civil regulations, the abovementioned law is not comprehensive and some of the relevant provisions are spread across other laws. It is essential to provide consumers with clear and preventive protection, be it penal or civil, under one inclusive law against the practice of fraud in commercial transactions.

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⁴² Majali, Nizam Tawfiq (2020). Explanation of the Penal Code, General Section, 7th Edition, Amman, Dar Al Thaqafa, p. 366.